

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

JUL 10 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Review of the Commission's	)	MM Docket No. 91-221
Regulations Governing	)	
Television Broadcasting	)	
	)	
Television Satellite Stations	)	MM Docket No. 87-8
Review of Policy and Rules	)	
	)	
Review of the Commission's	)	MM Docket No. 94-150
Regulations Governing	)	
Attribution of Broadcast	)	
Interests	)	DOCKET FILE COPY ORIGINAL
	)	
Review of the Commission's	)	MM Docket No. 92-51
Regulations and Policies	)	
Affecting Investment in the	)	
Broadcast Industry	)	
	)	
Reexamination of the	)	MM Docket No. 87-154
Commission's Cross-Interest	)	
Policy	)	

CONSOLIDATED REPLY COMMENTS OF AFLAC BROADCAST GROUP, INC.

AFLAC Broadcast Group, Inc. ("AFLAC"), by its attorneys, hereby submits its Consolidated Reply Comments in the above-referenced proceedings.<sup>1/</sup>

In its Consolidated Comments, AFLAC addressed four issues. AFLAC urged the Commission to retain the current 25% national audience limit on television station ownership in order

---

<sup>1/</sup>Because the nature of the issues raised in the two proceedings is so interconnected, AFLAC requested leave to submit Consolidated Comments addressing the issues raised in these two proceedings, FCC 94-322, (released January 17, 1995) (the television ownership proceeding) and FCC 94-324 (released January 12, 1995) (the attribution proceeding). For the same reasons, AFLAC hereby requests leave to file Consolidated Reply Comments.

to preserve the uniquely local nature of American television broadcasting.<sup>2/</sup> In addition, AFLAC urged the Commission to eliminate the current single majority shareholder exemption, asserted that television LMAs and time brokerage agreements should be defined as attributable interests, and asked the Commission to formally recognize a category of "de facto" attribution in order to permit the Commission to address new and unanticipated combinations of interests that are not dealt with in the context of its attribution rules.

It now appears that the issue of the national ownership limits for television stations will be resolved one way or the other in the context of the telecommunications legislation now being considered by Congress. Accordingly, AFLAC will not further address that issue here.

However, Congress is not expected to define which interests will be considered "attributable" for the purposes of the national and local ownership limits. Thus, that will remain a matter for determination by the Commission.

AFLAC submits that the definition of what constitutes an attributable interest lies at the very heart of the Commission's ownership limits -- because the attribution rules

---

<sup>2/</sup> However, AFLAC made clear that it does not oppose elimination of the current numerical limit on television station ownership.

define what types of interests are counted toward those limits. As AFLAC stated in its Consolidated Comments, "it may be possible to significantly extend the influence of a single individual or company far beyond the level contemplated by the multiple ownership rules through a variety of interests that are not defined as controlling or attributable." Consolidated Comments at 15. That same view was echoed by NBC, Inc. In its Comments in the attribution proceeding, it stated:

Wherever the multiple ownership limits are drawn, the attribution rules should not permit loopholes and combinations that undermine the policy decisions reflected in the ownership rules... .

. . .

The Commission should eliminate the fig leaves and trap doors that have been used to evade the attribution standards either by announcing that they are acceptable or by clearly prohibiting them.

NBC Comments at 3,8.

AFLAC agrees with this view. It was for this reason that AFLAC proposed the elimination of the single majority shareholder exemption.<sup>3/</sup> All too often, AFLAC believes that deals are structured with a nominal "single majority shareholder" in which substantial influence, if not outright control, lies with the so-called "minority" shareholder.<sup>4/</sup> Thus, in its

---

<sup>3/</sup> Most commenting parties agreed with AFLAC that LMAs and time brokerage agreements should be considered as an attributable interest. Accordingly, AFLAC will not address that issue here.

<sup>4/</sup> As the Network Affiliated Stations Alliance ("NASA") stated in its Comments in the attribution proceeding:

Consolidated Comments AFLAC suggested that the single majority shareholder exemption be eliminated and any attributable interest at or above the appropriate benchmark levels be counted toward the ownership limits. For the reasons stated in its Consolidated Comments, AFLAC continues to believe that this would be an appropriate step to prevent abuses of that exemption.

However, several parties commented that elimination of the single majority shareholder exemption might have the effect of discouraging investment in minority and other deserving broadcasting enterprises. One possible way of dealing with this concern, to which AFLAC would not object, would be to raise the attribution standard to a flat 25% where there is a single majority shareholder. Thus, whatever type of interest the Commission finds attributable in other contexts would, in cases where there is a single majority shareholder, be permitted up to a level of 24.99% before being considered as attributable. AFLAC

---

In practice, networks use minority and non-voting equity interests as a device to lock in network affiliation compliance and to otherwise increase their power. Indeed, the very fact of network ownership, cognizable or not, alters the fiduciary obligations of the majority owner so that the owner may have an obligation to favor the network. As a result of both the direct use of investments to gain affiliations and the indirect effects of network ownership, less than controlling ownership of a broadcast station by a network has substantially the same consequences as a controlling ownership interest.

NASA Comments at 10.

believes that this would permit bona fide investment to go forward while recognizing that interests above that level are likely to confer significant influence over the operations of broadcast licensees.

Additional protection against abuses of the Commission's attribution standards in single majority shareholder (and other) cases, would be provided by adoption of AFLAC's suggestion to formally recognize a category of "de facto" attribution. Both NBC and Capital Cities/ABC, Inc. recognize the need for some mechanism to deal with situations where, as Commissioner Ness put it in her separate statement in the WLUK-TV, Green Bay proceeding, "the whole is greater than the sum of its parts." BBC License Subsidiary, L.P., FCC 95-179 (released April 27, 1995). NBC Comments at 3; See Capital Cities/ABC, Inc. Comments at 11.

AFLAC believes that this category of "ad hoc" attribution must, of necessity, be a flexible one, without formal "bright line" tests. The entire purpose of this category is to permit the Commission to review and consider the potential for significant influence that flows from new types of interests or unanticipated combinations of interests. Adopting standards to determine when otherwise nonattributable interests would be considered attributable (as suggested by ABC) would defeat the

main purpose of this category by inviting clever dealmakers to structure arrangements to bypass these categories.

The Commission must recognize that there is simply no way that it can anticipate all possible types of ownership and operating arrangements that might be used to influence the operation of a broadcast licensee. Accordingly, the Commission should resist the "siren call" of absolute certainty and retain the flexibility to inquire into such arrangements on a case-by-case basis to determine whether the opportunity for significant influence over the operation of a broadcast licensee renders them attributable.

#### **CONCLUSION**

For the reasons stated above, and in its Consolidated Comments, AFLAC believes that the Commission should retain the current 25% national audience cap on television station ownership. In addition, the Commission should eliminate or modify the current single majority shareholder exemption in its attribution standards, should count television LMAs and time

brokerage agreements as attributable interests and should formally recognize a category of "ad hoc" attribution.

Respectfully submitted,

**AFLAC BROADCAST GROUP, INC.**

By: 

Craig J. Blakeley

POWELL, GOLDSTEIN, FRAZER & MURPHY  
1001 Pennsylvania Ave., N.W.  
Washington, D.C. 20004  
(202) 624-7347

Its Attorneys

July 10, 1995